

REMARKS

I. INTRODUCTION

Claims 1, 2, 10, and 11 have been amended. Support for the amendments can be found at least at ¶ [0022] and Fig. 1 of the published application. Thus, claims 1-12 remain pending in the present application. No new matter has been added. In light of the above amendments and the following remarks, Applicant respectfully submits that all presently pending claims are in condition for allowance.

II. THE 35 U.S.C. § 102(e) REJECTION SHOULD BE WITHDRAWN

Claims 1-7 and 9-11 stand rejected under 35 U.S.C. §102(e) for being anticipated by De'Longhi (U.S. Published App. No. 2004/0112223).

Claim 1 has been amended to recite, “[a] beverage making device comprising a frothing member for producing froth in the beverage and an outflow means for guiding the beverage outside the device, wherein the device comprises a settling chamber for allowing the frothed beverage coming from the frothing member to settle, and in that the outlet for the settled beverage is at the lower side of the settling chamber, wherein *a size of the outlet is limited so as to form a restriction which has a smaller diameter than the outflow means.*”

The Examiner states that the recitation of the outlet restriction is relative and that De'Longhi meets this limitation. (*See* 7/28/09 Office Action, p. 3). Specifically, the Examiner states that “the opening formed by the surrounding ribs, which feeds into the outlet, is larger than the outlet. Thus, the outlet can be said to be restricted.” (*See Id.*). However, claim 1 has been amended to further clarify the claimed invention. As amended, the outlet forms a restriction, “*which has a smaller diameter than the outflow means.*” The opening 16 of De'Longhi is what allows the drink of coffee to exit the dispenser 3. There is no disclosure by De'Longhi whatsoever of limiting the size of the opening 16 so that it forms “*a restriction which has a smaller diameter than the outflow*

means,” as recited in claim 1. Therefore, Applicant respectfully submits that claim 1 and its dependent claims 2-7 and 9-10 are allowable over De’Longhi.

Claim 11 also recites, “*a size of the outlet is limited so as to form a restriction which has a smaller diameter than the outflow means.*” Thus, it is respectfully submitted that claim 11 is also allowable over De’Longhi for at least the foregoing reasons presented with regards to claim 1.

III. THE 35 U.S.C. § 103(a) REJECTION SHOULD BE WITHDRAWN

Claims 8 and 12 stand rejected under 35 U.S.C. §103(a) for being obvious over De’Longhi.

As previously stated, De’Longhi fails to disclose or suggest *a size of the outlet is limited so as to form a restriction which has a smaller diameter than the outflow means,*” as recited in claim 1. Because claims 8 and 12 depend on and, therefore, contain all of the limitations of claim 1, it is respectfully submitted that these claims are allowable.

CONCLUSION

In light of the foregoing, Applicant respectfully submits that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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